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QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

Right to restitution, compensation and rehabilitation for victims of grave violations of human rights and fundamental freedoms

Report of the Secretary-General prepared pursuant to Commission resolution 1995/34

Addendum

The present addendum contains a summary of information submitted by the Governments of Romania, Togo and the United Kingdom of Great Britain and Northern Ireland.

ROMANIA

[Original: English]
[5 March 1996]

The Romanian Constitution sets out an extensive list of human rights and fundamental freedoms, including a series of provisions that are most relevant for the issue of the right to restitution, compensation and rehabilitation for victims of grave violations of human rights, as addressed in Commission resolution 1995/34.

The substantive provisions of the Romanian Constitution, which constitute the basic legal prerequisites for the exercise of the right to restitution, compensation and rehabilitation, are as follows:

Article 22

"(1) The right to life, as well as the right to physical and mental integrity of person, are guaranteed.

"(2) No one may be subjected to torture or to any kind of inhuman or degrading punishment or treatment".

Article 23

"(1) Individual freedom and security of person are inviolable.

"(2) Search, detainment or arrest of a person shall be permitted only in the cases and under the procedure provided by law".

Article 30

"(1) Freedom of expression of thought, opinion or belief ... by words, in writing, in pictures, by sound or other means of communication in public is inviolable.

"(6) Freedom of expression shall not be prejudicial to the dignity, honour, privacy of person and the right to one's own image".

In the same respect, the Romanian Constitution guarantees the right to defence (art. 24), personal and family privacy (art. 26), the inviolability of domicile (art. 27) and the protection of private property (art. 41).

Within the constitutional corpus of human rights and fundamental freedoms, the right of petition, as provided in article 47, holds a particular position:

"(1) Citizens have the right to apply to the public authorities by petitions formulated only in the name of the signatories.

"(3) The exercise of the right to petition shall be tax-exempt.

"(4) The public authorities are bound to answer to petitions within the terms and under the conditions established by law".

The right to restitution is expressly provided in article 48:

"(1) Any person aggrieved in his legitimate right by an administrative act or failure of a public authority to solve his application within the legal term is entitled to the acknowledgement of his right, ... of the act and remedies for damage.

"(3) The State bears patrimonial liability, according to the law, for damages caused by judicial errors in criminal cases".

However, the entire list of human rights guaranteed by the Romanian Constitution is to be interpreted in accordance with the general principles provided therewith, particularly, those stipulated in articles 20 and 21:

Article 20

"(1) Constitutional provisions concerning citizens' rights and liberties shall be interpreted and enforced in conformity with the Universal Declaration of Human Rights, with the covenants and other treaties to which Romania is a party.

"(2) Where any inconsistencies exist between the covenants and treaties on fundamental rights to which Romania is a party and internal laws, the international regulations shall take precedence".

Article 21

"(1) Every person is entitled to bring cases before the courts for the defence of his legitimate rights, liberties and interests.

"(2) The exercise of this right may not be restricted by any law".

The Romanian legislator's legal approach to the issue of the right to restitution, compensation and rehabilitation is, furthermore, extended through a series of provisions of organic and ordinary laws.

Thus, when incriminating offences that constitute grave violations of human rights and fundamental freedoms, the Romanian Penal Code also stipulates the right of victims of such violations to sue for civil injury against the offender or the person considered as responsible for the damage, according to the law.

More specific references are to be found in the provisions of articles 14, 21 and 506 of the Code of Penal Procedure:

Article 14

"Restoration of damage is made in accordance with the provisions of the civil law:

'(a) In kind, return of goods by enforcing the principle of restitutio in integrum, by the complete or partial annulment of an act or by any other means of restoration;

'(b) Alternative pecuniary compensation. Pecuniary compensation is also provided for the damages produced by the loss of possession'".

Article 21

"The civil appeal can be initiated or pursued by the successors when, according to the Court's final decision of retrial, it was established that the offence did not exist or that the person was innocent.

"This right attends to the person against whom preventive measures (preventive arrest, interdiction to leave the locality) were imposed and who was, subsequently, and for the reasons provided in the previous paragraph, acquitted or in respect of whom the accusation was dismissed (...)".

Article 506

"The person who is entitled to public compensation can address the Court ...

"The State is represented by the Ministry of Finance".

Law No. 29.1990 on administrative disputes provides in article 1 that: "the person aggrieved in his legitimate right by an administrative act or failure of a public authority to solve his application regarding a legitimate right is entitled to address the competent Court for the annulment of the act, the acknowledgement of his right and compensation for the damages thus produced".

Furthermore, according to article 11 of the same law, "the Court will also decide upon the material and moral compensation".

Although the right to rehabilitation is not expressly provided by law, Romanian jurisprudence has developed a particular legal framework in this regard.

Thus, considering the right for total compensation regarding material and moral damages as a consequence of grave violations of human rights, the victim is entitled to request:

(a) Pecuniary compensation during medical treatment, recovery or a requalification period;

(b) Pecuniary compensation for loss of possession during imprisonment or infirmity or for moral damages, including rehabilitation and social reintegration.

TOGO

[Original: français]
[8 mars 1996]

Le Gouvernement togolais se réjouit de l'adoption de cette importante résolution qui vient renforcer les efforts constamment menés par la communauté internationale pour garantir effectivement les droits de l'homme et les libertés individuelles et collectives.

Il convient de souligner, en ce qui concerne le Togo, que des événements malheureux et regrettables ont eu lieu pendant la transition, période au cours de laquelle la situation politique togolaise était particulièrement troublée et agitée.

Dans cette confusion généralisée, l'Etat avait perdu certaines de ses prérogatives : le gouvernement était impuissant à faire réprimer les actes délictuels ou criminels qui émaillaient cette période et la justice était loin de disposer des moyens d'agir.

Ainsi, pour renforcer la protection des droits de l'homme, des instructions ont été données aux magistrats du parquet et aux officiers de police judiciaire pour le respect scrupuleux de la procédure pénale.

En outre, le gouvernement s'est largement apesanti sur la manière de gérer les différents cas nés des troubles sociopolitiques.

Aussi, face à tous les cas de violations des droits de l'homme générés par la haine et les règlements de compte, le Gouvernement togolais, après mûres réflexions, a-t-il jugé indispensable d'offrir au peuple togolais l'opportunité de se pardonner afin de susciter la réconciliation nationale et instaurer l'apaisement général.

C'est dans cet esprit que le gouvernement a fait adopter, le 15 décembre 1994, une loi d'amnistie et a signé, le 12 août 1995, un accord avec le Haut Commissariat des Nations Unies pour les réfugiés en vue du rapatriement volontaire des réfugiés togolais.

Toujours dans l'optique de la réconciliation nationale, le gouvernement a entrepris une série d'actions visant à prendre en considération la question du droit à restitution, à indemnisation et à réadaptation, qui constitue la préoccupation essentielle de cette résolution.

La création d'un ministère des droits de l'homme et de la réhabilitation participe aux actions conçues à cette fin.

Au sein de ce département, il est envisagé la création d'une direction de la réhabilitation, qui serait chargée de la conception, de l'animation et du contrôle de toutes les activités devant concourir à la résolution du problème des victimes des troubles sociopolitiques.

Il est prévu, au sein de cette direction, la création de deux divisions, à savoir : la division de la législation et de la réglementation qui devra veiller à l'adoption de mesures d'ordre législatif, réglementaire et judiciaire relatives à la réhabilitation des victimes des troubles sociopolitiques et la division de la logistique dont les attributions sont orientées vers la mise en oeuvre de moyens indispensables à la réinsertion et au dédommagement progressif des victimes des troubles sociopolitiques.

Par ailleurs, il convient de préciser que des dispositions concrètes sont en train d'être prises pour assurer à tous les citoyens une égale protection devant la loi.

Il s'agit notamment de l'indépendance de la magistrature et de la mise en place de la cour constitutionnelle et autres juridictions non moins importantes.

Voici autant de mesures envisagées que le Gouvernement togolais estime nécessaires pour assurer véritablement la garantie effective du droit à restitution, du droit à indemnisation et du droit à réadaptation des victimes de violations des droits de l'homme.

Aussi, le Gouvernement togolais réitère-t-il, avec intérêt, sa pleine adhésion aux initiatives pertinentes figurant dans cette résolution.

Il exhorte en conséquence la Commission à intensifier ses actions en vue d'amener les Etats à renforcer leur législation interne dans ce domaine pour une meilleure garantie des droits des victimes de violations graves des droits de l'homme.

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

[Original: English]
[12 February 1996]

The law of the United Kingdom does not treat "grave violations of human rights" as constituting, as such, a distinct category of unlawful acts and therefore does not make specific provision for the award of compensation, etc. in such cases. However, that does not at all mean that, in what must be regarded as the purely hypothetical situation in which such a violation was committed in the United Kingdom, the victim would be unable to obtain compensation.

The report of the Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, from which the relevant provision of resolution 1995/34 derived, identified grave violations of human rights as involving the following: Genocide; slavery; summary executions; torture; enforced disappearances; arbitrary and prolonged detention; deportation or forcible transfer of population; or systematic discrimination. It can confidently be said that none of these violations of human rights takes place in the United Kingdom.

However, all of the acts of practices involved, if they ever did occur, would be unlawful, and most of them, as well as giving rise to a civil right to compensation (damages for tort), would also involve the commission of crimes. For example, both genocide and torture have expressly been made criminal offences for which severe penalties may be imposed (pursuant to the Genocide Convention and the Convention against Torture, respectively), while arbitrary detention and summary execution would be offences under the ordinary criminal law. The Criminal Injuries Compensation Scheme, which was introduced in 1964, provides for the payment of compensation out of public funds to the blameless victims of violent crimes. As regards systematic discrimination, there is provision in both the legislation which deals with discrimination on grounds of sex (the Sex Discrimination Act 1975, as amended) and the legislation which deals with discrimination on grounds of race, etc. (the Race Relations Act 1976, as amended) that enables persons who claim to be the victims of such discrimination to apply to a tribunal or, in some cases, to a court for the award of compensation.